

REMARKS

Entry of the foregoing amendments is respectfully requested.

Summary of Amendments

By the foregoing amendments claims 12, 24, 36 and 41 are amended and claims 45-47 are added, whereby claims 12-17, 19, 20, 23, 24, 26, 32, 33, 35-37 and 41-47 will be pending, with claims 12, 36, 41 and 44 being independent claims.

The amendments to claims 12, 24, 36 and 41 are self-explanatory and do not introduce any new matter.

Applicants emphasize that the amendments to claims 12, 24, 36 and 41 are without prejudice or disclaimer, and Applicants expressly reserve the right to prosecute these claims in their original, unamended form in one or more continuation and/or divisional applications.

Summary of Office Action

The Examiner requests that the trademark Eusolex® 232 allegedly recited in present Example 2 be capitalized and accompanied by the generic terminology.

Applicants note that the Examiner has withdrawn the allowability of former claims 38-40, now claims 41-43.

Claims 12-17, 19, 20, 23, 24, 26, 32, 33 and 35-37 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claims 12-17, 19, 20, 32, 33, 35-37 and 41-43 are rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as allegedly being obvious over McGee et al., U.S. Patent No. 5,585,343 (hereafter “McGEE”).

Claims 12, 16, 17, 20, 23, 24, 26, 20-33 (?) and 35 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as allegedly being unpatentable over Henkel KGaA, DE 4,010,393 (hereafter “HENKEL”) as evidenced by Schambil et al., U.S. Patent No. 6,086,787 (hereafter “SCHAMBIL”).

Claims 12-17, 19, 20, 23, 24, 26, 32, 33, 35-37 and 41-45 (?) are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over HENKEL in view of SCHAMBIL, Rosano, U.S. Patent No. 4,146,499 (hereafter “ROSANO”), Hoppe et al., U.S. Patent No. 4,839,165 (hereafter “HOPPE”), Unilever PLC, EP 560 516 (hereafter “UNILEVER”) and/or The Procter & Gamble Company, EP 616 027 (hereafter “P & G”).

Response to Office Action

Reconsideration and withdrawal of the objections and rejections of record are respectfully requested in view of the foregoing amendments and the following remarks.

Response to Objection to Specification

The Examiner requests that the trademark Eusolex® 232 allegedly recited in present Example 2 be capitalized and accompanied by the generic terminology.

Applicants respectfully submit that there is no trademark Eusolex® 232 or similar trademark recited in Example 2. Clarification is respectfully requested.

Response to Rejection under 35 U.S.C. § 112, Second Paragraph

Claims 12-17, 19, 20, 23, 24, 26, 32, 33 and 35-37 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The rejection alleges that the scope of these claims is indefinite “since in claims 12 and 36, the oil phase is set forth with narrow transitional language, i.e., ‘constituting essentially of’, and further set forth with open transitional language, i.e. ‘comprising’ ”.

Applicants respectfully traverse this rejection. In particular, claims 12 and 36 recite that the oil phase consists essentially of constituents of low volatility and comprises at least one of the substances listed therein. One of ordinary skill in the art will readily understand what this means. The term “comprises” merely indicates that one or more substances which differ from the recited substances may additionally be present in the oil phase as long as in this case the oil phase still consists essentially of constituents of low volatility.

In view of the foregoing it is submitted that the rejection of claims 12-17, 19, 20, 23, 24, 26, 32, 33 and 35-37 under 35 U.S.C. § 112, second paragraph, is unwarranted and should be withdrawn, which action is respectfully requested.

Response to Rejection of Claims under 35 U.S.C. § 102(e)/103(a) over McGEE

Claims 12-17, 19, 20, 32, 33, 35-37 and 41-43 are rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as allegedly being obvious over McGEE. The rejection asserts that McGEE discloses laureth sulfate as polyethoxylated emulsifier and hydrocarbons as perfume oils. The rejection further asserts that McGEE discloses the

use of both ethylene glycol monophenyl ether and fatty alcohols in the exemplified compositions and alleges that said materials “would have been expected to have W/O emulsifier properties”.

Applicants respectfully disagree with the Examiner in this regard. Nevertheless, merely in order to facilitate and further the prosecution of the present application, rejected independent claims 12, 36 and 41 have been amended to eliminate hydrocarbons from the list of substances of which at least one is present in the oil phase of the water-in-oil microemulsion. Specifically, amended independent claims 12, 36 and 41 recite that the oil phase of the microemulsion recited therein comprises at least one of an ester of an alkanecarboxylic acid with a chain length of from 3 to 30 carbon atoms and an alcohol with a chain length of from 3 to 30 carbon atoms, an ester of an aromatic carboxylic acid and an alcohol with a chain length of from 3 to 30 carbon atoms, a hydrocarbon wax, a dialkyl ether, cyclomethicone, and hexamethylcyclotrisiloxane. McGEE neither teaches nor suggests any of these oil phase components and for this reason alone, does not anticipate or render obvious the subject matter of any of the claims submitted herewith.

Applicants further note that McGEE additionally fails to teach or suggest, *inter alia*, the presence of any of the ethoxylated O/W emulsifiers which are recited in amended independent claims 36 and 41 and/or the presence any of the W/O emulsifiers recited in present amended claim 24 in the perfume formulations taught therein.

Further, Applicants also fail to see that one of ordinary skill in the art would want to incorporate, for example, an astringent or a detersive surfactant in the perfume formulations of MCGEE, thereby rendering the elements recited in present claims 14 and 17 non-obvious as well.

For at least all of the foregoing reasons, it is respectfully requested that the rejection of claims 12-17, 19, 20, 32, 33, 35-37 and 41-43 under 35 U.S.C. § 102(e)/103(a) over McGEE be withdrawn.

Response to Rejection of Claims under 35 U.S.C. § 102(b)/103(a) over HENKEL

Claims 12, 16, 17, 20, 23, 24, 26, 20-33 and 35 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as allegedly being unpatentable over HENKEL as evidenced by its English language equivalent SCHAMBIL. In this regard, the Office Action essentially repeats the allegations set forth in previous Office Actions.

Applicants respectfully (and strongly) disagree with the Examiner in this regard as well. Specifically, Applicants again point out that independent claim 12 submitted herewith is not anticipated or rendered obvious by HENKEL for at least the reason that it recites that the cosmetic preparation claimed therein is a translucent or transparent oil-in-water microemulsion.

In contrast, the cosmetic preparation of HENKEL is not a sprayable translucent or transparent oil-in-water microemulsion but a cream which is prepared from the “microemulsion” described by HENKEL by adding to the latter at least one consistency generator selected from water-soluble polymers and W/O emulsifiers to afford a thickened (non-flowing) emulsion which exhibits plastic behavior at 20°C with a yield point of at least about 5 Pascal. In other words, according to HENKEL, the microemulsion disclosed therein as such does not serve any cosmetically useful purpose but is only an intermediate for the preparation of a cosmetic product (cream). In this regard, the abstract and claim 1 of SCHAMBIL may, for example, be referred to. Particularly from col. 1, lines 32-50 of SCHAMBIL it becomes clear that the low-viscosity “microemulsions” described in HENKEL are not *per se* useful for cosmetic purposes (emphases added):

Although high particle fineness and stability are desirable for cosmetic purposes, cosmetic emulsions at the same time should not be free-flowing, but should have an ointment-like or creamy consistency for a number of applications. In the conventional production of creams, this was achieved by increasing the percentage content of the inner phase (oil component), by using solids fats or waxes or by using soaps or other thickening or gel-forming anionic emulsifiers. The measures mentioned added considerably to the cost of the emulsion systems

or reduced the fineness and stability of the emulsions and impaired their dermatological compatibility or the cosmetic feeling of the skin.

It has now been found that creams of the oil-in-water type can be produced with considerable advantage from liquid oil components by initially preparing a low-viscosity, very fine-particle oil-in-water emulsion in known manner with phase inversion and subsequently thickening the emulsion by consistency-generating co-emulsifiers or thickening hydrophilic polymers.

Accordingly, HENKEL not only fails to disclose a cosmetic preparation which is a translucent or transparent oil-in-water microemulsion, but even teaches away therefrom. Further, HENKEL does not appear to disclose any specific utility for the cosmetic creams disclosed therein, let alone that these creams can be used as cosmetic skin or hair cleansing preparations, cosmetic skin or hair care preparations or deodorant preparations as recited in the present independent claims. In fact, apart from the essential ingredients of the creams disclosed therein, HENKEL does not appear to disclose any other ingredients, additives, auxiliaries, etc. which would provide an indication which specific type(s) of cosmetic product(s) the creams of HENKEL are to be used for.

Applicants submit that for at least all of the foregoing reasons, HENKEL does not anticipate or render obvious the subject matter of any of the present independent claims (and the claims dependent therefrom), wherefore the rejection under 35 U.S.C. § 102(b)/103(a) over HENKEL should be withdrawn, which action is respectfully requested.

Response to Rejection of Claims under 35 U.S.C. § 103(a) over HENKEL in View of SCHAMBIL, ROSANO, HOPPE, UNILEVER and/or P & G

Claims 12-17, 19, 20, 23, 24, 26, 32, 33, 35-37 and 41-44 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over HENKEL in view of SCHAMBIL, ROSANO, HOPPE, UNILEVER and/or P & G. The rejection concedes that HENKEL differs from the rejected claim in

the incorporation of allegedly conventional cosmetic ingredients but essentially alleges that ROSANO cures this deficiency of HENKEL. The rejection further asserts that to the extent differ in particular emulsifiers employed, HOPPE, UNILEVER and P & G allegedly “disclose the use of alkyl ether sulfates or non-ionic ethoxylates in combination or alternatively with alkyl ether carboxylates in cleaning and/or hair care compositions. In this regard, the rejection also alleges that “[t]hese references are combinable because they teach cleaning compositions and particularly hair care compositions and the surface active agents suitable therefor”.

Applicants respectfully traverse this rejection. Applicants respectfully submit that the cosmetic preparations recited in the present independent claims differ from the compositions of HENKEL *inter alia* in that HENKEL does not teach or suggest a cosmetic preparation which is a microemulsion (claim 12) or that they comprise O/W emulsifiers which are neither taught nor suggested by HENKEL (claims 36, 41 and 44).

ROSANO, HOPPE, UNILEVER and P & G do not cure these deficiencies of HENKEL. For example, ROSANO does not teach or suggest employing a microemulsion *per se* as a cosmetic preparation, let alone as one of the cosmetic preparations recited in present claim 12. Neither does ROSANO appear to disclose any of the O/W emulsifiers recited in present independent claims 36, 41 and 44.

Further, none of HOPPE, UNILEVER and P & G exemplifies any microemulsions.

P & G even expressly states that the concentrated cleaning composition is not in the form of a microemulsion (see, e.g., claim 1).

Moreover, the concentrated cleaning composition of P & G is primarily for cleaning hard surfaces and may also be of interest for other cleaning compositions including dishwashing and

laundry detergent compositions (page 1, lines 3-5). It is not seen what such a concentrated cleaning composition has to do with a cosmetic preparation.

Example 1 of HOPPE relied on by the Examiner is a shampoo composition comprising, *inter alia*, fatty alcohol polyglycol ether carboxylic acid (Alkypo RLM 150). Applicants do not know the structure of Alkypo RLM 150. At any rate, it is not seen why one of ordinary skill in the art would have any reason to replace the cetyl/stearate + 12 EO alcohol mixture in the microemulsions or cosmetic creams of Examples 1 and 2 of HENKEL by Alkypo RLM 150 from the shampoo composition of HOPPE, and neither does the present Office Action offer any explanation in this regard.

UNILEVER relates to hair care compositions which comprise a perfluoropolyether material and a silicone conditioning agent as critical components (see, e.g., abstract and claim 1). UNILEVER mentions in passing that the compositions can be present as a microemulsion but does not contain any specific disclosure in this regard. None of the numerous exemplary compositions of UNILEVER appears to be a microemulsion.

Moreover, while UNILEVER mentions ethoxylated and propoxylated anionic surfactants as optional components of the compositions disclosed therein, none of the specific examples of anionic surfactants mentioned at page 6, lines 9-14 appears to be comprised in any of the classes of O/W emulsifiers recited in present independent claims 36, 41 and 44.

At any rate, Applicants fail to see why one of ordinary skill in the art would have any reason to replace the cetyl/stearate + 12 EO alcohol mixture in the microemulsions or cosmetic creams of Examples 1 and 2 of HENKEL by any of the anionic surfactants which are mentioned in UNILEVER as optional components of hair care compositions which comprise a perfluoropolyether material and

a silicone conditioning agent as critical components (and which do not appear to be present in the compositions of HENKEL), and neither does the present Office Action offer any explanation in this regard.

Applicants submit that for at least all of the reasons set forth above, the rejection of claims 12-17, 19, 20, 23, 24, 26, 32, 33, 35-37 and 41-44 under 35 U.S.C. § 103(a) over HENKEL in view of SCHAMBIL, ROSANO, HOPPE, UNILEVER and/or P & G is unwarranted, wherefore withdrawal thereof is respectfully requested.

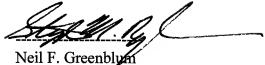
It is pointed out that some of the allegations set forth in the present Office Action are not addressed herein merely because they are of no relevance in view of the facts set forth above. However, Applicants' silence in this regard should by no means be construed as admission that any of these allegations are meritorious.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

P29692.A07

Respectfully submitted
Anja EITRICH et al.

A handwritten signature in black ink, appearing to read 'Neil F. Greenblum', written over a horizontal line.

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